

## Chapter 2 Utah Science Technology and Research Governing Authority Act

### Part 1 General Provisions

#### **63M-2-101 Title.**

- (1) This title is known as "Governor's Programs."
- (2) This chapter is known as the "Utah Science Technology and Research Governing Authority Act."

Amended by Chapter 283, 2015 General Session

#### **63M-2-102 Definitions.**

As used in this chapter:

- (1) "Executive director" means the individual appointed under Subsection 63M-2-301(9).
- (2) "Governing authority" means the Utah Science Technology and Research Governing Authority created in Section 63M-2-301.
- (3) "Higher education institution" means an institution listed in Section 53B-2-101.
- (4) "Principal researcher" means an individual who:
  - (a)
    - (i) on May 10, 2016, is employed, alone or as part of a research team, by a research university;
    - (ii) before May 10, 2016, received funding from USTAR for some or all of the researcher's startup costs or research university salary;
    - (iii) was recruited by a research university to become a member of a research university's faculty; and
    - (iv) on or after May 10, 2016, continues to receive USTAR support; or
  - (b)
    - (i) is employed on or after May 10, 2016 as a researcher by a higher education institution;
    - (ii) receives USTAR support; and
    - (iii) is recruited by the governing authority and the higher education institution to become a member of the higher education institution's faculty.
- (5) "Private entity":
  - (a) means a privately owned corporation, limited liability company, partnership, or other business entity or association; and
  - (b) does not include an individual or a sole proprietorship.
- (6) "Research building" means a building:
  - (a) for which the governing authority holds title; and
  - (b) that is located on the campus of a research university.
- (7) "Research university" means:
  - (a) the University of Utah; or
  - (b) Utah State University.
- (8) "USTAR" means the Utah Science Technology and Research Initiative created in Section 63M-2-301.
- (9) "USTAR researcher" means:
  - (a) a principal researcher; or
  - (b) an individual, other than a principal researcher, who:

- (i) is employed by a higher education institution; and
  - (ii) receives USTAR support.
- (10) "USTAR support" means assistance provided by USTAR including:
  - (a) financial support;
  - (b) technical assistance;
  - (c) mentoring; and
  - (d) the use of:
    - (i) research or laboratory space controlled by USTAR in a building other than a research building; and
    - (ii) equipment in space described in Subsection (10)(d)(i).

Amended by Chapter 240, 2016 General Session

### **Part 3**

## **Utah Science Technology and Research Governing Authority**

### **63M-2-301 The Utah Science Technology and Research Initiative -- Governing authority -- Executive director.**

- (1) There is created the Utah Science Technology and Research Initiative.
- (2) To oversee USTAR, there is created the Utah Science Technology and Research Governing Authority consisting of:
  - (a) the state treasurer or the state treasurer's designee;
  - (b) the executive director of the Governor's Office of Economic Development;
  - (c) three members appointed by the governor, with the consent of the Senate;
  - (d) two members appointed by the president of the Senate;
  - (e) two members appointed by the speaker of the House of Representatives; and
  - (f) one member appointed by the commissioner of higher education.
- (3)
  - (a) The eight appointed members under Subsections (2)(c) through (f) shall serve four-year staggered terms.
  - (b) An appointed member under Subsection (2)(c), (d), (e), or (f):
    - (i) may not serve more than two full consecutive terms; and
    - (ii) may be removed from the governing authority for any reason before the member's term is completed:
      - (A) at the discretion of the original appointing authority; and
      - (B) after the original appointing authority consults with the governing authority.
- (4) A vacancy on the governing authority in an appointed position under Subsection (2)(c), (d), (e), or (f) shall be filled for the unexpired term by the appointing authority in the same manner as the original appointment.
- (5)
  - (a) Except as provided in Subsection (5)(b), the governor, with the consent of the Senate, shall select the chair of the governing authority to serve a one-year term.
  - (b) The governor may extend the term of a sitting chair of the governing authority without the consent of the Senate.
  - (c) The executive director of the Governor's Office of Economic Development shall serve as the vice chair of the governing authority.

- (6) The governing authority shall meet at least six times each year and may meet more frequently at the request of a majority of the members of the governing authority.
- (7) Five members of the governing authority are a quorum.
- (8) A member of the governing authority may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance:
    - (i) pursuant to Sections 63A-3-106 and 63A-3-107; and
    - (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (9)
  - (a) After consultation with the governing authority, the governor, with the consent of the Senate, shall appoint a full-time executive director to provide staff support for the governing authority.
  - (b) The executive director is an at-will employee who may be terminated with or without cause by:
    - (i) the governor; or
    - (ii) majority vote of the governing authority.

Amended by Chapter 240, 2016 General Session

**63M-2-302 USTAR governing authority powers and duties.**

- (1) The governing authority shall:
  - (a) ensure that funds appropriated to USTAR are used appropriately, effectively, and efficiently in accordance with this chapter;
  - (b) in cooperation with a research university's administration, work to expand research at the research university;
  - (c) enhance technology transfer and commercialization of research and technology developed at a higher education institution to create high-quality jobs and new industries in the private sector in the state;
  - (d) ensure that USTAR programs do not duplicate existing or planned programs of other state agencies;
  - (e) establish written economic development objectives for USTAR that are measurable and verifiable;
  - (f) consider input from the Governor's Office of Economic Development and higher education institutions;
  - (g) establish and administer a grant program, as provided in Section 63M-2-503, and provide USTAR support, as provided in Section 63M-2-504, consistent with and to further economic development objectives that the governing authority establishes; and
  - (h) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to implement this chapter.
- (2) The governing authority may:
  - (a) in addition to receiving money appropriated by the Legislature, receive contributions to USTAR from any source, in the form of money, property, labor, or other thing of value;
  - (b) subject to restrictions imposed by a donor or legislative appropriation, allocate money for programs and activities described in this chapter;
  - (c) enter into an agreement necessary to obtain private equity investment in USTAR;
  - (d) charge and collect rent for space in a facility or building that USTAR controls;

- (e) in fulfilling the governing authority's duties and responsibilities under this chapter, collaborate with:
  - (i) the Governor's Office of Economic Development and other state agencies with an interest in economic development; and
  - (ii) private entities with an interest in economic development; and
- (f) delegate powers and duties to the executive director.
- (3) A state agency, higher education institution, or political subdivision with which the governing authority seeks to collaborate in fulfilling the governing authority's duties under this chapter shall cooperate with the governing authority as reasonably necessary to enable the governing authority to fulfill its duties under this chapter.

Repealed and Re-enacted by Chapter 240, 2016 General Session

**63M-2-302.5 USTAR governing authority requirements.**

The governing authority is subject to the requirements of an executive branch agency and is:

- (1) an agency for purposes of Title 63J, Chapter 1, Budgetary Procedures Act;
- (2) an executive branch procurement unit for purposes of Title 63G, Chapter 6a, Utah Procurement Code;
- (3) a governmental entity for purposes of Title 63G, Chapter 2, Government Records Access and Management Act; and
- (4) a public body for purposes of Title 52, Chapter 4, Open and Public Meetings Act.

Amended by Chapter 240, 2016 General Session

## **Part 5**

### **Ustar Support**

**63M-2-501 Title.**

This part is known as "USTAR Support."

Enacted by Chapter 240, 2016 General Session

**63M-2-502 Principal researchers -- Agreement requirements -- Discontinuing funding.**

- (1) Subject to legislative appropriation, the governing authority shall:
  - (a) provide funding to help a research university honor its commitments to principal researchers employed by the research university; and
  - (b) give priority to funding provided under Subsection (1)(a).
- (2) The governing authority shall enter into a written agreement with a higher education institution that employs a principal researcher:
  - (a) establishing performance standards and expectations for a principal researcher; and
  - (b) requiring the higher education institution to require a principal researcher to comply with reporting requirements set forth in Section 63M-2-702.
- (3)
  - (a) A principal researcher may not be hired on or after May 10, 2016 without the approval of the governing authority and the higher education institution.

- (b) A higher education institution that enters into or renews an agreement with a principal researcher on or after May 10, 2016 shall include in the agreement:
  - (i) a specific time period for the commitment of USTAR funding;
  - (ii) the amount of USTAR funding committed to the higher education institution for the principal researcher, specifying the purpose of the funding;
  - (iii) an acknowledgment that the principal researcher understands and agrees to the reporting requirements and performance standards under this chapter; and
  - (iv) the governing authority's written approval of the terms of the new or renewed agreement.
- (4) The governing authority may not allocate money to a higher education institution for a principal researcher unless the higher education institution provides the reporting required under Section 63M-2-702.
- (5) The governing authority may discontinue allocating money to a higher education institution for a principal researcher if the governing authority and the president of the higher education institution employing the principal researcher agree in writing that:
  - (a) the principal researcher:
    - (i) fails to meet the performance standards and expectations established under Subsection (2) (a);
    - (ii) receives a reasonable opportunity to remedy the failure to meet performance standards and expectations; and
    - (iii) fails to remedy the failure to meet performance standards and expectations; and
  - (b) under the circumstances, discontinuing USTAR funding to the higher education institution for the principal researcher is appropriate and justified.

Enacted by Chapter 240, 2016 General Session

**63M-2-503 USTAR grant programs.**

- (1) The governing authority shall establish at least one competitive grant program that:
  - (a) is designed to:
    - (i) address market gaps in technology development in the state; or
    - (ii) facilitate research and development of promising technologies;
  - (b) does not overlap with or duplicate other state funded programs; and
  - (c) offers grants, on a competitive basis, to:
    - (i) researchers employed by higher education institutions;
    - (ii) private entities; or
    - (iii) partnerships between researchers employed by higher education institutions and private entities.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the governing authority shall make rules that describe, for each grant program:
  - (a) the purpose;
  - (b) eligibility criteria to receive a grant;
  - (c) how the governing authority determines which proposals receive grants;
  - (d) reporting requirements in accordance with Part 7, Reporting by Recipients of USTAR Support; and
  - (e) other information the governing authority determines is necessary or appropriate.
- (3) The governing authority:
  - (a) shall solicit proposals for each grant program; and
  - (b) may, subject to legislative appropriation and Subsection 63M-2-502(1)(b), award grants for each program.

- (4) In evaluating a grant proposal received in response to a solicitation under this section, the governing authority shall consider, as applicable:
  - (a) the extent to which the planned research has the potential for commercialization;
  - (b) the market gap the technology or research fills; and
  - (c) other factors the governing authority determines are relevant, important, or necessary.
- (5) The governing authority shall require a recipient of a grant under this section, as a condition of receiving a grant, to comply with the reporting requirements described in:
  - (a) Section 63M-2-702, for a USTAR researcher; or
  - (b) Section 63M-2-703, for a private entity or for a partnership between a USTAR researcher and a private entity.

Enacted by Chapter 240, 2016 General Session

**63M-2-504 Other USTAR support.**

- (1) The governing authority shall:
  - (a) provide mentoring, networking, and entrepreneurial training for a private entity or USTAR researcher to help take a new technology to market;
  - (b) provide support to a private entity or USTAR researcher in assessing the potential for bringing a technology to market; and
  - (c) encourage industry partnerships between a private entity and a USTAR researcher.
- (2) The governing authority shall require a recipient of USTAR support under this section, as a condition of receiving USTAR support, to comply with the reporting requirements in:
  - (a) Section 63M-2-702, for a USTAR researcher; or
  - (b) Section 63M-2-703, for a private entity or for a partnership between a USTAR researcher and a private entity.

Enacted by Chapter 240, 2016 General Session

## **Part 6**

### **Research Buildings**

**63M-2-601 Title.**

This part is known as "Research Buildings."

Enacted by Chapter 240, 2016 General Session

**63M-2-602 Lease agreement for a research building -- Requirements for lease agreement.**

- (1) The governing authority shall enter into a written lease agreement with a research university to lease to the research university a research building constructed on the research university's campus.
- (2) A lease agreement under Subsection (1) shall:
  - (a) require the research university to pay the ongoing operation and maintenance expenses associated with the research building, including for any infrastructure in the research building; and

- (b) subject to the reporting requirements described in Section 63M-2-705, permit the research university to use or rent space within the research building for research other than research receiving USTAR support, including research by a private entity.

Enacted by Chapter 240, 2016 General Session

## **Part 7**

### **Reporting by Recipients of Ustar Support**

#### **63M-2-701 Title.**

This part is known as "Reporting by Recipients of USTAR Support."

Enacted by Chapter 240, 2016 General Session

#### **63M-2-702 Reporting requirements for higher education institutions.**

- (1) Except as provided in Subsection (3), on or before September 1 each year, a higher education institution employing a USTAR researcher shall submit a written report to the governing authority.
- (2) A report under Subsection (1) shall contain information on:
  - (a) collaborations established by a USTAR researcher with other researchers;
  - (b) the amount and source of funding, other than USTAR funding, expended on a USTAR researcher's research program, including:
    - (i) federal funds;
    - (ii) philanthropic or nonprofit funds;
    - (iii) industry funds; and
    - (iv) state funds other than USTAR funds, including funds from a higher education institution;
  - (c) a copy of each:
    - (i) technology disclosure that a USTAR researcher files with a higher education institution;
    - (ii) license agreement that the higher education institution enters into with respect to a technology developed by a USTAR researcher, including any current, expired, or breached license; and
    - (iii) patent filed by the higher education institution based on technology developed by a USTAR researcher;
  - (d) publications in which a USTAR researcher participated, including a citation for each peer reviewed publication;
  - (e) the number of research jobs maintained by a USTAR researcher's research program and average wages paid to those holding those jobs;
  - (f) expenses paid using USTAR funds, including:
    - (i) salary and benefits for a USTAR researcher or staff;
    - (ii) operational expenses;
    - (iii) capital equipment expenses; and
    - (iv) travel; and
  - (g) compensation, including salary and benefits, that a USTAR researcher received from a publicly funded source other than USTAR funds.
- (3) The governing authority may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to simplify or eliminate the reporting requirements described

in this section for a USTAR researcher who has received less than \$100,000 in cumulative USTAR funding for a particular line of research.

Enacted by Chapter 240, 2016 General Session

**63M-2-703 Reporting requirements for private entities.**

- (1) On or before September 1 of each year, the governing authority shall collect the information described in Subsection (2) from each private entity that:
  - (a) receives USTAR support;
  - (b) receives more than 20 hours of training from USTAR;
  - (c) purchases a private entity that previously received USTAR support; or
  - (d) licenses a technology developed by a USTAR researcher.
- (2) The governing authority shall collect information on:
  - (a) public or private investment received by the private entity after the private entity:
    - (i) begins to receive USTAR support;
    - (ii) licenses a technology from a USTAR researcher; or
    - (iii) purchases a private entity that previously received USTAR support;
  - (b) sales or revenue generated by the product or technology;
  - (c) the number of jobs created by the private entity and the average wage for each position; and
  - (d) the location of the private entity.
- (3)
  - (a) To collect the information described in Subsection (2), the governing authority shall, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, contract with an independent third party to conduct a survey of each private entity described in Subsection (1).
  - (b) The independent third party selected under Subsection (3)(a) shall use industry standard practices to collect the information described in Subsection (2).
- (4) The governing authority and Department of Workforce Services shall coordinate to verify the job and average wage information described in Subsection (2)(c).

Enacted by Chapter 240, 2016 General Session

**63M-2-704 Reporting on licensed or acquired intellectual property.**

In an agreement between an institution of higher education and a private entity that licenses or acquires an interest in intellectual property developed by a USTAR researcher, the institution of higher education shall include a provision requiring the private entity, as a condition of receiving a license or acquiring an interest in intellectual property, to comply with the reporting requirements in Section 63M-2-703.

Enacted by Chapter 240, 2016 General Session

**63M-2-705 Reporting on use of research buildings.**

On or before September 1 of each year, a research university shall submit a report to the governing authority concerning the use, during the immediately preceding fiscal year, of the research building located on the research university's campus, including:

- (1) the name of each individual who conducts research in the research building;
- (2) the name of each private entity that uses the research building;
- (3) the total amount charged by the research university for the use of space or facilities in the research building;



- (4) the amount and source of funding, other than USTAR funding, received by a researcher, other than a researcher that is a private entity, housed in the research building, including:
  - (a) federal funding;
  - (b) state funding, including institutional funding;
  - (c) private philanthropic or nonprofit funding; and
  - (d) industry funding; and
- (5) the number of disclosures, patents, and licenses resulting from research conducted in the research building.

Enacted by Chapter 240, 2016 General Session

## **Part 8**

### **Ustar Reporting and Audit Requirements**

#### **63M-2-801 Title.**

This part is known as "USTAR Reporting and Audit Requirements."

Enacted by Chapter 240, 2016 General Session

#### **63M-2-802 USTAR annual report.**

- (1)
  - (a) On or before October 1 of each year, the governing authority shall submit an annual written report for the preceding fiscal year to:
    - (i) the Business, Economic Development, and Labor Appropriations Subcommittee;
    - (ii) the Economic Development and Workforce Services Interim Committee;
    - (iii) the Business and Labor Interim Committee; and
    - (iv) the governor.
  - (b) An annual report under Subsection (1)(a) is subject to modification as provided in Subsection (5) after an audit described in Section 63M-2-803 is released.
- (2) An annual report described in Subsection (1) shall include:
  - (a) information reported to the governing authority:
    - (i) by an institution of higher education under Section 63M-2-702;
    - (ii) through the survey described in Section 63M-2-703; and
    - (iii) by a research university, under Section 63M-2-705;
  - (b) a clear description of the methodology used to arrive at any information in the report that is based on an estimate;
  - (c) starting with fiscal year 2017 data as a baseline, data from previous years for comparison with the annual data reported under this Subsection (2);
  - (d) relevant federal and state statutory references and requirements;
  - (e) contact information for the executive director;
  - (f) other information determined by the governing authority that promotes accountability and transparency; and
  - (g) the written economic development objectives required under Subsection 63M-2-302(1)(e) and a description of progress or challenges in meeting the objectives.
- (3) The governing authority shall design the annual report to provide clear, accurate, and accessible information to the public, the governor, and the Legislature.

- (4) The governing authority shall:
  - (a) submit the annual report in accordance with Section 68-3-14; and
  - (b) place a link to the annual report and previous annual reports on USTAR's website.
- (5) Following the completion of an annual audit described in Section 63M-2-803, the governing authority shall:
  - (a) publicly issue a revised annual report that:
    - (i) addresses the audit;
    - (ii) responds to audit findings; and
    - (iii) incorporates any revisions to the annual report based on audit findings;
  - (b) publish the revised annual report on USTAR's website, with a link to the audit; and
  - (c) provide written notification of any revisions of the annual report to:
    - (i) the Business, Economic Development, and Labor Appropriations Subcommittee;
    - (ii) the Economic Development and Workforce Services Interim Committee;
    - (iii) the Business and Labor Interim Committee; and
    - (iv) the governor.
- (6) In addition to the annual written report described in this section, the governing authority shall:
  - (a) provide information and progress reports to a legislative committee upon request; and
  - (b) on or before October 1, 2019, and every five years after October 1, 2019, include with the annual report described in this section a written analysis and recommendations concerning the usefulness of the information required in the annual report and USTAR's ongoing effectiveness, including whether:
    - (i) the reporting requirements are effective at measuring USTAR's performance;
    - (ii) the reporting requirements should be modified; and
    - (iii) USTAR is beneficial to the state and should continue.

Enacted by Chapter 240, 2016 General Session

**63M-2-803 Audit requirements.**

- (1) Every third year beginning 2018, an audit of USTAR shall be made as described in this section.
- (2)
  - (a) As approved by the Legislative Audit Subcommittee, the audit shall be conducted by:
    - (i) the legislative auditor; or
    - (ii) an independent auditor engaged by the legislative auditor.
  - (b) An independent auditor used under Subsection (2)(a)(ii) may not have a direct financial conflict of interest with USTAR or the governing authority.
- (3) The governing authority shall pay the costs associated with the annual audit.
- (4) The annual audit shall:
  - (a) include a verification of the accuracy of the information required to be included in the annual report described in Section 63M-2-802; and
  - (b) be completed by December 1 of the year the report is required under Subsection (1).

Renumbered and Amended by Chapter 240, 2016 General Session